

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

<b>KARL FONTENOT,</b>	)	
	)	
<b>Appellee/Petitioner,</b>	)	<b>Eastern District of Oklahoma</b>
	)	<b>No. CIV-16-069-JHP</b>
<b>vs.</b>	)	
	)	<b>Tenth Circuit Court of Appeals</b>
<b>SCOTT CROW, Interim Director,<sup>1</sup></b>	)	<b>No. 19-7045</b>
	)	
<b>Appellant/Respondent.</b>	)	

**DESIGNATION OF RECORD ON APPEAL**

COMES NOW the Respondent, Scott Crow, by and through Matthew D. Haire and Theodore M. Peeper, Assistants Attorney General as representatives of the State of Oklahoma, pursuant to the Order of the Tenth Circuit Court of Appeals on September 27, 2019, and designates the record in the above-styled case. Respondent designates as the record on appeal in the pending appeal before the Tenth Circuit Court of Appeals the entire record – pleadings, files, papers, and transcripts of whatever nature relating to this case – that were before the district court or in the possession of the district court clerk. Respondent excludes from the record on appeal only those items specifically identified, by crossing out the number, on the attached district court docket sheet (Attachment 1).<sup>2</sup>

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<sup>1</sup> Scott Crow has replaced Joe Allbaugh as Interim Director of the Oklahoma Department of Corrections and is thus substituted as the Respondent pursuant to Fed. R. Civ. P. 25(d).

<sup>2</sup> A number of sealed items are in the record, and Respondent knows that some of those items are subpoenas. *See, e.g.*, Doc. 63-1, p. 4 and n.6 (noting Respondent’s knowledge of several subpoenas sealed by the court in February, 2017). Respondent, however, has no way of knowing which sealed documents contain subpoenas or what the other sealed items are, despite his belief they are not all subpoenas. Respondent recognizes 10<sup>th</sup> Cir. R. 10.4(E) and would not knowingly designate items

Respondent designates no material outside the district court record.

Respectfully submitted,

**MIKE HUNTER**  
**ATTORNEY GENERAL OF OKLAHOMA**

**s/ MATTHEW D. HAIRE**  
**MATTHEW D. HAIRE, OBA #14916**  
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**s/ THEODORE M. PEEPER**  
**THEODORE M. PEEPER, O.B.A. #19909**  
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**Counsel for: Appellant/Respondent**

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normally excluded by the Rule. But, in light of the broad nature of the court’s “actual innocence” inquiry, Respondent will designate those sealed documents because he does not know what they contain and because he must ensure the Tenth Circuit has everything it needs to make its decision. *See* 10<sup>th</sup> Cir. R. 10.4(A) (“Counsel must designate a record on appeal or prepare an appendix that is sufficient for considering and deciding the appellate issues.”)

**CERTIFICATE OF SERVICE**

**X** I hereby certify that a copy of this designation, with docket sheets attached, was served on opposing counsel and filed with the clerk of the court of appeals on the 11<sup>th</sup> day of October, 2019.

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**s/ MATTHEW D. HAIRE**

**s/ THEODORE M. PEEPER**